THE HON'BLE SRI JUSTICE C.V. RAMULU

Monday, 13th November, 2006

W.P.Nos.19784 of 2000 and 4940 of 2001

W.P.No.19784 of 2000

Between:

Sri Umasankara Handloom Weavers
Coop.Production & Sale Society Ltd.,
Rep. by its President Manchu
Chandrayya … Petitioner

and

The Srikakulam District Cooperative
Central Bank Limited, No.M 210,
Srikakulam, rep. by its Chairman,
P.B.No.20, Srikakulam … Respondent

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W.P.No.19784 of 2000

COMMON ORDER:

These two Writ Petitions are inter-connected; therefore, they are being disposed of by this common Order.

It appears that one Korasavada Handloom Weavers' Cooperative Production and Sales Society became unviable; as such, the same was merged with the petitioner-society i.e. Sri Uma Sankara Weavers' Cooperative Production and Sale Society Limited. Along with the merger, petitioner also got an amount of Rs.4.38 lakhs as liability of the said society. However, sofar as these liabilities are concerned, no refinance was allowed in view of the fact that there was no total merger of all the assets and liabilities. According to the petitioner, as per the norms of NABARD, the primary societies are entitled for the loans on an interest at the rate of 7½% or as fixed by the NABARD from time to time, whereas, the respondent-Srikakulam District Cooperative Central Bank Limited has been charging interest at 24%. Since it became very onerous, the petitioner-society made a representation on 13-9-1994 before the 1st respondent-Bank. The Board of Directors of the Respondent No.1 passed a resolution dated 20-9-1994 as under:

Subject No.19	Resolution

To read letter dt.13.9.94 of the Chairman Sri Umasankara WCS, Korasavada requesting the Bank to charge the normal rate of interest only instead of 24% being charged on the cash credit amount of Rs.4.38 lakhs of erstwhile Korasavada WCS merged with their account and to adjust the excess interest so charged previously to the society at the end of every quarter.	Resolved to charge normal rate of interest on the cash credit being renewed from own funds and to adjust the excess interest so charged every quarter, previously, to the cash credit account as requested by the society in view of NABARD guidelines to charge normal rate of interest irrespective of source of finance.

In fact, the 1st respondent has been charging interest against the said loan at 7½% or as fixed by NABARD from time to time, from 1-4-1995 in pursuance of the resolution dated 20-9-1994. However, insofar as the amounts due and collected from 2-3-1989 (date of merger of Korasavada Society) till 31-3-1995, the 1st respondent charged interest at 24% against the said amount of Rs.4.38 lakhs due by the merged society. Further, after filing Writ Petition No.19784 of 2000, the 1st respondent issued a notice dated 27-2-2001 making a demand of Rs.25,42,774-39 ps., which is impugned in Writ Petition No.4940 of 2001.

A detailed counter affidavit has been filed by the respondent-Bank. The resolution and the further correspondence made in that regard and also charging of 7½% interest or as fixed by NABARD from time to time with effect from 1-4-1989 is not denied. According to the learned Standing Counsel for the 1st respondent-Bank, the present demand is made in view of the fact that these loans were advanced from the funds of A.P. State Cooperative Bank (APCOB) and not from their own funds; therefore, they are forced to charge interest at 24%. However, learned counsel for the petitioner filed a reply and along with it, some papers are filed showing that these loans were advanced to Korasavada Handloom Weavers Cooperative Production and Sales Society Limited, from the own funds of the 1st respondent-Bank.

The resolution, as noticed above, would clearly indicate that the respondent-Bank resolved to charge normal rate of interest on cash credit being renewed from own funds and to adjust the excess interest so charged every quarter, previously, to the cash credit account as requested by the society in view of NABARD guidelines to charge normal rate of interest irrespective of source of finance. This shows that the 1st respondent-Bank is also supposed to adjust the amounts of excess interest collected earlier every quarter; thus making the interest at 7½% or as fixed by the NABARD from time to time right from the date of merger i.e. 2-3-1989. In view of the above, I am of the opinion that neither the demand made by the respondent-Bank nor the demand notice issued by them on 27-2-2001 for collecting interest at 24% right from the date of merger till 31-3-1995 can be said to be either legal or justified. In the teeth of the resolution dated 20-9-1994, which is not reversed, any demand made by the respondents charging interest at 24% per annum is not tenable.

In view of the above, the Writ Petitions are disposed of holding that the demand made by the respondent-Bank against the petitioner-society for charging interest at 24% for the loan amount due by Korasavada Handloom Weavers Cooperative Production and Sales Society Limited right from 2-3-1989 till 31-3-1995 is arbitrary and illegal. However, this will not preclude the respondent-Bank from working out its remedies as available under the law. No order as to costs.

13-11-2006

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